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September 4, 2002

BY FACSIMILE AND HAND DELIVERYKaren Getman, Chairman
Commissioners Knox, Swanson, Downey
Fair Political Practices Commission
428 J Street, Sixth Floor
Sacramento CA 95814Re: Proposed Regulations 18225.7, 18225.8

Dear Chairman and Commissioners:

This is to support and join the comments and proposed draft regulation submitted by Lance Olson, Esq., and Diane Fishburn, Esq., in response to the Commission staff's draft Regulation 18225.7 in its entirety and on draft emergency Regulation 18225.8.

A. Proposed Regulation 18225.7

Olson and Fishburn hit the nail right on the head concerning the proper focus of the regulation.

The purpose of defining "made at the behest" is largely to draw a line between what is a "contribution" to the candidate benefitted by an expenditure and an "independent expenditure." When the Commission becomes too wrapped up in all "behesting" (sic) situations, i.e., trying to define "contribution" comprehensively, seemingly obvious things get fuzzy. Sometimes, existing definitions of "contribution" such as those contained in Government Code Section 82015(b) (see below) or Regulation 18215 which elaborate on more particularized aspects of what is and is not a "contribution," are forgotten.

Olson and Fishburn also point correctly to the possible unintended consequence of treating as a "contribution" a payment made "at the behest of a candidate" when that candidate is not the beneficiary of the expenditure. In 1990, the Commission adopted former Regulation 18538.2, which treated as a contribution to an endorsing candidate the costs of a communication paid for by the endorsee candidate in which the endorsing candidate appeared (to make his/her endorsement). That regulation was invalidated by the United States District Court in *Wax v. Fair Political Practices Commission*. The proposed regulation comes very close to the thin ice of *Wax*.

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Moreover, the draft regulation also is inconsistent with Government Code Section 82015(b)(1), subdivisions (C)(i) and (D).

Subdivision (b)(1)(C)(i) states:

"(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent."

Subdivision (b)(1)(D) states:

"(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate."

On 18225.7, I commend the Olson and Fishburn regulation for consideration.

B. Proposed Emergency Regulation 18225.8

With respect to proposed Regulation 18225.8, I also concur in Olson's and Fishburn's comments and concerns. While Mr. Woodlock's memorandum expressing concern about defining payments made at the behest of a committee is well taken as far as it goes, Olson and Fishburn point out cogently why even as modified by Mr. Woodlock, the draft regulation remains problematic.

I apologize for the lateness of this comment. Current election matters and litigation prevented its earlier submission and make it impossible for me to attend tomorrow's meeting.

Very truly yours,


Charles H. Bell, Jr.

CHB: ljs

cc: Lance H. Olson, Esq.
Diane Fishburn, Esq.